

**PROFFER STATEMENT
Angler Opal Associates, LLC**

**January 26, 2005
Revised March 24, 2005
Revised May 20, 2005
Revised May 26, 2005
Revised June 1, 2005
Revised June 2, 2005
Revised June 23, 2005
Revised July 10, 2005
Revised October 10, 2005
Amended March 27, 2007 (withdrawn)
Amended April 30, 2007**

This proffer statement is submitted pursuant to the authority of the Code of Virginia and the Fauquier County Zoning Ordinance (“Ordinance”) by the Owner and the Applicant of the area of real property containing approximately 165 acres (PIN #6981-27-6354-000 and PIN #6981-44-4079-000), Cedar Run Magisterial District, Fauquier County, Virginia which is described and referenced in the referenced rezoning application and materials filed with Fauquier County. Further, the Owner and the Applicant, their successors and assigns hereby proffer that in the event that the Board of Supervisors of Fauquier County (“Board”) approves the subject application to rezone the Property (PIN #6981-27-6354-000 which encompasses approximately 134.2 acres and PIN #6981-44-4079-000) which encompasses approximately 31.4 acres (together the “Property”) from the R-1 District to the R-1 District and R-2 District, the development of the Property will be in accord with the regulations of the R-1 District and R-2 District and the proffers contained herein.

In the event the above referenced rezoning is not granted as applied for by the applicant (“Applicant”), these proffers shall be deemed withdrawn and shall be null and void. If this application is denied by the Board, but in the event an appeal is for any reason thereafter remanded to the Board for reconsideration by a court of competent jurisdiction, then these proffers shall be deemed withdrawn unless the Applicant shall affirmatively readopt all or any portion hereof, in writing specifically for that purpose. The heading of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provided at the time of development of that portion of the Property adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein.

The term “Applicant” as referenced herein shall include within its meaning all future owners, assigns and successors in interest. When used in these proffers, the

“Concept Development Plan” shall refer to the plan entitled “Concept Development Plan,” prepared by Professional Land Consultants, LLC and dated November 17, 2004 and as revised September 1, 2005 (the “CDP”).

I. LAND USE

1. The proposed residential development shall be in substantial conformance with the Concept Development Plan (“CDP”), provided that the Applicant shall be permitted to make modifications in consultation with the Director of Community Development, including roadway alignments, and stormwater management pond location, existing and future utility locations, storm sewer issues, transportation improvements, lot re-configuration (including variation in lot size and lot dimensions), open space access and uses and stormwater management requirements, final determination of 100 year flood inundation area or wetland areas, and similar land use, zoning and environmental requirements as required during final engineering design.
2. The residential development along Avenel Drive shall not exceed two (2) residential lots. In addition, the residue of this parcel shall constitute a non-common open space lot and shall be recognized as one building lot in accordance with the Zoning Ordinance. The exact acreage and lot configuration for the two residential lots and the non-common open space lot shall be determined at final engineering.
3. The residential development for the combined R-1 and R-2 cluster lots shall not exceed a total of sixty-eight (68) lots. The R-2 cluster lots may constitute a combination of single family detached and attached units, in accordance with the R-2 cluster zoning ordinance provisions. The Applicant may construct pipestem lots on the R-1 and R-2 clustered portions of the development. Further, all of the R-1 and R-2 clustered lots shall be connected to a FCWSA public water and public sewer system

II. OPEN SPACE

1. The proposed R-1 cluster portion of the Property shall provide not less than 50% open space, and the proposed R-2 cluster community shall provide not less than 50% open space. The cluster open space requirements noted herein shall be provided throughout the Property consistent with §§ 2-309 and 2-406 of the Zoning Ordinance. All open space boundaries depicted on the CDP may be modified at the time of final engineering, in order to satisfy applicable Zoning Ordinance requirements.

2. At the time of recordation of the subdivision plat for the Property, the Applicant shall convey common open space areas to a homeowners' association created for ownership and maintenance of those common areas, among other duties. The balance of the open space, unless further modified by these proffers or CDP, or upon final engineering, shall be retained as a non-common open space parcel.

III. ASSURANCE OF HOUSING AVAILABILITY FOR CERTAIN PURCHASERS:

In support of the County's Housing Objectives, Applicant shall provide 15 of the proposed residential units to County employees as "Workforce Housing" units on the Property. For the purposes of this proffer "workforce housing" shall mean housing as to which the Applicant shall contribute the sum of \$55,000.00, as further provided herein, and except to the extent that the terms hereof may be modified by the County and the Applicant.

1. The work force units shall be reserved for Fauquier County sheriffs' deputies, Fauquier County public school teachers, and any other Fauquier County or School Division employees who have been so employed for not less than three years ("Qualifying Purchasers")..
2. Management of the program established hereby shall be reposed in the County, or, at the direction of the County, in a non-profit corporation (the "Program Administrator") to be formed by the Applicant prior to site plan approval, to be governed by a board of directors consisting of five persons for terms of four years each. One member thereof shall be a representative of the Fauquier Realtors Association, one of the Northern Virginia Building Industries Association, and three members selected as the Board of Supervisors may determine; provided that a representative of the Applicant shall be a member of the initial board of directors. The Program Administrator shall report to the Zoning Administrator with respect to each qualified purchase to demonstrate compliance with the requirements hereof. This administration of the program, if it be by the aforesaid corporation, shall be handed over to the County at such time as the County so requests in writing.
3. Any lot on the Property may be acquired as a Workforce Housing Unit. In order to provide ample time to identify Qualifying Purchasers, they shall be offered to Qualifying Purchasers for a period of one year from the date on which a foundation is laid for the first home on the Property (the "Marketing Period"). The Program Administrator shall provide written notice of the commencement of the Marketing Period to the Zoning Administrator within ten business days thereof. Qualifying Purchasers

may purchase Workforce Housing units at any time during the marketing period.

4. In the event that a Qualifying Purchaser so elects, he or she may purchase a home elsewhere in Fauquier County or the Town of Warrenton. The Applicant shall pay to the County the sum of \$55,000.00 for each such Qualifying Purchaser, which the County may use in its discretion to assist such Qualifying Purchaser in the purchase of such other residence. The Applicant shall be required to fund such sums as follows. Upon the laying of the foundation of the first residence, the Applicant shall pay over the sum of \$55,000.00, and thereafter upon the closing of sales of not less than each five market rate units including the first market rate unit sold, until the sums paid equate to such contribution for those workforce housing units under this section.
5. Following the aforesaid Marketing Period, any units not sold to or contracted for Qualifying Purchasers pursuant to this proffer shall revert to market rate units ("General Market Units") that may be purchased by members of the public. When any unit is sold by the Applicant to a third party as a General Market Unit, the Applicant, or the property owner as provided below, shall pay sums to Fauquier County, or the Program Administrator as follows. At the end of the Marketing Period, the Applicant shall pay to the County the aforesaid sum for each five Market Rate Units theretofore sold, and thereafter upon the closing of sales of not fewer than each five market rate units including the first market rate unit sold, until the sums paid equate to such contribution for those workforce housing units under this section, together with the further sum of \$21,613.00 for each such unit.
6. The Applicant shall execute a non-interest bearing note and a deed of trust for \$55,000.00, for funds provided by the Applicant to the Qualifying Purchaser as a down payment on a Workforce Housing Unit. Fauquier County, or the Program Administrator, shall be the beneficiary of such deed of trust, which shall be recorded upon the sale of any workforce unit to a Qualifying Purchaser, and shall be deemed satisfied upon the earlier of (a), the tenth anniversary of the recordation of the deed of trust, or (b) payment of \$55,000.00 to Fauquier County if and when a Qualifying Purchaser sells the home to a non-Qualifying Purchaser. Any gain above such sum shall accrue to the seller, subject to other valid liens and deeds of trust that may be of record with respect to the property. Following the expiration of the period of the deed of trust, the property may be conveyed as other units are conveyed.
7. The Applicant's total contribution toward workforce housing shall be \$825,000.

8. Workforce housing shall be marketed only as owner-occupied principal residences.
9. Workforce housing units exterior appearance shall not be physically distinguishable from market rate housing.

IV. ENVIRONMENT

1. The Applicant shall endeavor to protect any wetland areas from site disturbance. In consideration of potential on-site environmental issues, Applicant shall complete a Phase I environmental analysis, including a wetlands delineation, prior to Preliminary Plan submittal. Any disturbance of wetland areas for the installation of trails, roads, utility lines, lot grading and other related public improvements shall be coordinated with and permitted by appropriate state and federal regulatory authorities. The Applicant shall further complete a geotechnical study for submission of a Preliminary Plat.
2. In order to avoid problems with potential high water table conditions, all basements to be constructed on soils with a high seasonal water table shall be suitably engineered by a professional engineer. The specific design and soils recommendation shall be coordinated with the Director of Community Development and may include a variety of engineering and construction methods, including but not limited to, over-lot grading techniques, sump pumps in conjunction with subsurface drains which connect to the internal storm sewer systems and drainage ponds outside of VDOT right-of-way, french drains, gravity drains, and related design measures to minimize the risk of wet basements. Any dwelling may be built on a slab, or using English basements where with the concurrence of the Director.
3. At the time of final engineering, Applicant shall establish the 100-year flood inundation zone on the Property (non-FEMA regulated). No residential structures shall be constructed within any area encompassed by the 100-year flood elevation. However, Applicant shall be permitted to conduct normal grading and placement of controlled fill on any lot in order to provide for adequate drainage and to install utilities, roadways and related improvements as deemed necessary at the time of final engineering design.
4. The SWM/BMP facilities for the site may include a variety of techniques including but not limited to “in-stream wet pond”, “enhanced detention ponds”, “constructed wetlands,” and/or “dry ponds” consistent with the County’s Stormwater Management Ordinance. In addition, Applicant

shall receive a 100% BMP credit in accordance with the Northern Virginia BMP Handbook and the County's Stormwater Management Ordinance for preserved jurisdictional wetland areas, and such other BMP credits as may be authorized by applicable ordinances and regulations.

5. Applicant shall install a "super silt fence" along the rear property lines of lots #48 - #51 to provide a tree saved area to the adjacent property owner to the east (i.e., PIN # 6981-54-4190).

V. TRAILS/RECREATION

1. The Applicant shall provide an inter-connecting trail system from the residential community to the proposed Active Recreation Area, to be owned and maintained by the homeowners association to be created for this project. This trail system shall be a combination of sidewalks and asphalt trails.
2. The Applicant shall provide an Active Recreational Area for the proposed cluster residential community, generally in the location noted on the CDP, to be owned and maintained by the homeowners association created for this project. The active recreational facilities provided at said site may include, but shall not be limited to, play apparatus equipment, picnicking areas and outdoor game/sport field facilities.

VI. TRANSPORTATION/ACCESS

1. The Applicant shall access the proposed cluster residential community from a new public roadway located on the adjacent residential property to the east (i.e., PIN # 6981-54-4190) generally in the location as depicted on the CDP. Applicant shall design and construct said public road, with up to a 60-foot right-of-way, in accordance with VDOT standards. Acquisition of the necessary right-of-way for such road shall be completed prior to the submission of a preliminary subdivision plan.
2. Applicant shall provide a fifty-foot dedicated right-of-way for future inter-parcel access to the adjacent property to the north (i.e., PIN # 6981-32-7251) generally as depicted on the CDP or at another location as determined acceptable by Fauquier County at the time of final engineering.
3. As a condition of approval of the final subdivision plat for the Property, the Applicant shall contribute the sum of \$25,000 to Fauquier County for future transportation improvements in the Opal Service District.

4. The Applicant shall require that all heavy construction traffic be restricted to the existing fifty-foot ingress-egress easement located on the adjacent parcel to the south (i.e., PIN # 6981-32-7629). Further, this “gravel construction road” shall be “gated” after development and serve only as an emergency access for the residential community.

VII. PHASING

1. Final build-out of the proposed residential community will not occur in less than three (3) years from date of zoning approval and not more than 30 residential occupancy permits may be issued in any one calendar year. However, additional occupancy permits may be issued in any given year equal to the number of permits not issued in the previous year. This phasing program shall not encompass the two lots proposed along Avenel Drive.

PUBLIC SERVICES CONTRIBUTION

1. The Applicant shall make a cash payment to Fauquier County of \$14,730.00 per single-family non-affordably priced unit at the time of issuance of the building permit for each residential unit after the 32nd residential unit building permit shall have been issued. Unless subsequently revised by Fauquier County, said contribution shall be allocated to the following departments in the following amounts:

a.	Schools:	\$ 11,890.00
b.	Parks & Recreation:	\$ 730.00
c.	Libraries:	\$ 303.00
d.	Fire & Rescue:	\$ 1,363.00
e.	Sheriff:	\$ 369.00
f.	Environ. Services:	\$ 179.00
	Total:	\$ 14,730.00

ESCALATOR CLAUSE

1. Monetary contributions contained in this Proffer Statement paid to Fauquier County Board of Supervisors following the date of the rezoning shall be in those amounts as stated herein. Contributions paid after the initial year from the date of approval of the subject Rezoning shall be adjusted in accordance with the Urban Consumer Price Index (“CPI-U”) published by the United States Department of Labor, calculated from the CPI-U published most nearly to and following January 1st of the aforesaid initial year to the date the contributions are paid, subject to a cap of three percent (3%) per year, non-compounded.

SIGNATURES APPEAR ON FOLLOWING PAGE

Angler Opal Associates, LLC
H. Joe Wiltse, Managing Member

Date